



Request for Proposals

Town of Los Gatos HVAC Preventive Maintenance And Repair Service

ISSUANCE DATE
Monday, August 31, 2015

PROPOSALS DUE
Monday, September 14, 2015
2:00 pm

Town of Los Gatos
Parks & Public Works Department
41 Miles Avenue
Los Gatos, CA 95030



Town of Los Gatos

Parks and Public Works Department

41 Miles Avenue

Los Gatos, CA 95030

Phone: (408) 399-5770

Fax: (408) 354-8529

August 31, 2015

Dear Prospective Contractor:

The Town of Los Gatos is requesting written proposals to provide contract Heating, Ventilating, and Air Conditioning (HVAC) Preventive Maintenance and Repair Services.

The initial term of the agreement is anticipated to be for one year, with options to renew for up to three additional years at terms to be agreed upon between the parties, for a maximum term of four years.

A mandatory pre-bid meeting and walk-through is scheduled for 10:00 a.m., Friday September 4, 2015 beginning at the Los Gatos Parks & Public Works Service Center located at 41 Miles Avenue in Los Gatos. Failure to attend this mandatory pre-bid meeting will disqualify contractors from submitting proposals for this contract.

Proposals shall be made on the Proposal Form included in this Request for Proposals. Proposers shall enter all requested information in the appropriate spaces on the Proposal Form. No oral, telephone, facsimile, or electronic proposals will be accepted. All costs of proposal preparation shall be borne by the proposer.

To be considered for this contract, **3 copies** of the proposal must be received by the Town of Los Gatos no later than **2:00 p.m., Monday September 14, 2015** addressed as follows:

Town of Los Gatos
Parks and Public Works Department
Custodial Services Proposals
41 Miles Avenue
Los Gatos, CA 95030

All inquiries or questions regarding this proposal shall be directed to:

Jim Harbin
Facilities and Environmental Programs Manager
(408) 395-5310
jharbin@losgatosca.gov

Detailed information on the requested services, proposal requirements and evaluation and selection criteria are provided in the following sections of this request for proposals.

REQUESTED SCOPE OF SERVICES

Locations

The Contractor shall for the term of the contract furnish all labor, equipment, materials and supplies (where indicated) necessary to provide HVAC Services at the following locations:

Facility Name	General Description	Size	Address
Civic Center	Offices, Council Chambers, Dispatch, Museum, Restrooms	35797	110 East Main St
Los Gatos Library	Public Library, Offices, Restrooms	29000	100 Villa Ave
Service Center	Offices, Locker Room, Fueling Station, Restrooms	6600	41 Miles Ave
Police Operations Building	Offices, Locker Room, Holding Cells, Restrooms	12171	15900 Los Gatos Blvd
Adult Recreation Center	Offices, Multi-purpose rooms, Restrooms	12000	208 East Main St
Total Square Footage		95568	

Note: Square footages are provided for general guidance purposes only. Although the Town has used its best efforts to provide accurate square footage information, it makes no assurances that these square footages are correct.

General Specifications

The HVAC preventive maintenance and repair services involve regular preventive maintenance and repair of HVAC equipment at five Town building locations by licensed contractors with properly trained, experienced and qualified personnel. This includes approximately 95000 square feet of climate controlled space.

The contract(s) which may result from this Request for Proposals will include, but not be limited to, the following provisions:

- Monthly preventive maintenance of all systems
- 24-hour on-call services for repair of HVAC systems
- Response to and repair of trouble calls within the specified time
- Regular submission to the Town of accurately maintained and detailed work records.
- Add/alternative #1 – General plumbing service response and repair.

Site Specific Specifications

The Contractor shall provide ongoing maintenance and repair of HVAC equipment by duly trained and qualified personnel. During the term of the agreement, the contract shall provide a 24 hour per day, 7 days per week service and force of qualified workers, sufficient to respond to calls at any time and promptly make temporary and permanent repairs.

Emergency Repair Services

The Contractor shall provide and maintain emergency service response on a 24 hour per day, 7 days per week basis, including all holidays, and within a 60 minute arrival window. The Contractor shall have available and readily accessible in functioning order, all required tools, equipment, apparatus, facilities, and materials needed to perform all work necessary to maintain and repair the equipment listed in this specifications document.

Preventive Maintenance

The Contractor shall for the term of the contract furnish all labor, equipment, and materials and perform all work necessary to repair and maintain the heating, ventilating, and air conditioning (HVAC) system at the Civic Center, Adult Recreation Center, Parks and Public Works Service Center, Los Gatos Library, and Police Operations Building. The air and/or hydronic distribution system shall be maintained in an order that will keep the system balanced at all times. The terms of the contract shall be 3 years unless modified by mutual consent. The HVAC system for the purpose of this maintenance specification shall be defined as all heating, ventilating, and air conditioning equipment, and controls therefore included:

Component	Manufacturer	Model Number
	Civic Center	
Chiller (150 Ton) 208 V	Trane Series R Centravac R22	RTHB150A
Air Compressor Belt-(1)BX56	Quincy 2HP 115/230V	QCO20BRS1A
Chilled Water Pump	Bell & Gosset 208/230V	1510 10HP 3BC 8.625 BF
Hot Water Pump	Bell & Gosset 208/230V	1510 3HP 3AC 6.5 BF
Hot Water Heater	A.O.Smith	BIR 255 gallon
Boiler	Durafin 8/19/08	D20000NG-2 Milliomm BTU
Air Handler	Trane M-Series Climate Changer	MCCB02SUAOAUB
Exhaust Fan EF2E	Penn Berry	TUB245C1A9
Refrigerant Monitor R-22	Trane	RMWERP411D01001AD
Air Dryer	Hankinson	HPR10-115 1 CFM
Interface Panel	Trane Summit System	BMTX001AA011
Cooling Tower	BAC	VTO-132-LX
Condenser Water Pump	Bell & Gosset	E1510 10HP 4BD 8.125SSF
Split Unit System	Mitsubishi	Mr. Slim - PC36 GA
Split Unit System	Day & Night	FB4ANF024
Split Unit System	Sanyo	KS1211W
Air Handler	Trane Climate Changer	Type 6
Exhaust Fan #1	Trane	0.5 HP
Air Handler	Trane	
Air Handler	Trane	Climate Changer Type 3
Fan	American Standard	300-364 Size:300
Compact Fan	Trane	16A
Exhaust Fan	American Standard	200-143 1HP
DX Package Unit	Trane	WSC072A3R0A20
Split Unit System	Sanyo	S93CJ024-A
Air Handler	Haakon	AIRPAK
Exhaust Fan	Penn Berry	ES1222C1A9
Split Unit System	York/Trane	GTHCO36AA/2TTB3036A1000AA
Compact Fan	Trane	16A 2HP
Supply Fan - Museum Space	Greenheck	QEID-24-90-A150
Exhaust Fan - Museum Elevator	Greenheck	SE1-8-440-E-X

Component	Manufacturer	Model Number
Adult Recreation Center		
Air Handler #1	Trane	L8
Air Handler #2	Trane	L6
Fan Coils - Room 1-4	Trane Air Handler	Direct Drive H36AL03U
Fan Coils - Rms 212 & 2nd flr hall	Trane Air Handler	Direct Drive B25DL08U
Fan Coils - Rm 5,206,208,211,214,204	Trane Air Handler	Direct Drive B25SAL06U
Fan Coils - Reception & Lobby	Trane Air Handler	Direct Drive FCH130401
Fan Coils - Rm 6,7,203,205	Trane Air Handler	Direct Drive H36AL04U
Boiler	Telldyne Laars	HH0325C
Hot Water Circulation Pump	Bell & Gosset	1/4 HP
2nd Hot Water Pump	Bell & Gosset	3/4 HP
Chilled Water Pump	Bell & Gosset	5 HP
Chiller R-410A 17.6 lbs	Carrier	30 Ton 30RAP0305FA02100
Restroom Exhaust Fan	Dayton	4YC876
Exhaust Fan	New York Blower	V-10121-100
Air Handler	D Air Tech	D-AH-25
Kitchen Hood Fan	Sanyo	1/6 HP

Component	Manufacturer	Model Number
Police Operations Building		
Hot Water Heater	State High Energy Boiler	SUF130300NEA
Exhaust Fan #1 &5	Greenheck	6B-101-4-X
Exhaust Fan #2	Greenheck	6B-081-4-X
Exhaust Fan #3	Greenheck	SB-81-4-X
Exhaust Fan #4	Greenheck	
Exhaust Fan #6	Greenheck	6-060-DGEX-QD
AC #1	Carrier	48HJR004-F541NB
Split Systems #1 & #2	Mitsubishi	PUY-A36 NHA2
AC #2,#3,& #4	Carrier	48HJS005-F551NB
AC #5	Carrier	48HJR004-F541NB
AC #6	Carrier	48HJS008-MF541NB
AC #7	Carrier	48HJS007-F551NB

Component	Manufacturer	Model Number
	PPW Service Center	
Heat Pumps (3)(Outback)	Bard	WH242-A
Split System (Engineering)	Bryant	S38DNX018000D
Package Unit (Lunch Room)	Trane	4YCC3048A1096BA
Split System (sign Shop)	Trane XR80	TXC49CC4HPCO
Air Compressor (Mech Shop)	Ingersoll Rand	2545D75
Air Compressor (Sign Shop)	Ingersoll Rand	253 D5
Condenser Unit/Heat (Whitehouse Up)	Payne/Lennox	PA13NR060-H/C16-63-2
Condenser Unit/Heat (Whitehouse down)	Lennox/Lennox	Hs24-6S1-1P/CR16-6S-2

Component	Manufacturer	Model Number
	Los Gatos Library	
Boiler	Aerco Modulex	Unical/Modulex 160 MLX606H
Hot Water Pump #1	Bell & Gosset	1531 2HP
Hot Water Pump #2	Bell & Gosset	1531 2HP
Primary Pump (in line)	Bell & Gosset	86047 3/4 HP
Solar Electric Water Heater	American Water Heater	SE62-119R-0455C 119 gal
Solar Heat Storage EWH	Onicon	Model Sytem #10
Solar WH Closed Loop Device	Heliodyne	016 000
Exhaust Fan	Greenheck	TO01C0x0x000301862
Fresh Air Air Handler	Greenheck	MSX-110-H12-DB
RTU #1	Trane	Intellipac
Condensers (2)	Daikin	R410A 19.8 lbs
Condenser Unit #1	Daikin	R410A 2.2 lbs RX524DVJU
Condenser Unit #2	Daikin	R410A 3.75 lbs RX524 DVJU
Split System washable filter	Daikin	DX FTX524HVJU
Split System washable filter	Daikin	DX FTXS12HVJU
VRV System #1	Daikin	
VRV System #2	Daikin	
VRV System #3	Daikin	
VRV System #4	Daikin	
VRV System #5	Daikin	
VRV System #6	Daikin	FXMQ12PVJU
VRV System #7	Daikin	
VRV System #8	Daikin	
VRV System #9	Daikin	FXMQ24 PUJU
VRV System #10	Daikin	
Underfloor Terminal Units (20)	Price	FDBU Series

Periodic preventative maintenance procedures shall be performed in accordance with manufacturer's specifications and the following table. Preventive maintenance may be performed early, but the maximum interval between maintenance procedures may not be exceeded.

Description	Max. Interval (months)
Control Systems	
Check Tracer Summit, Daikin, and Syserco building controls and thermostats for proper programming/operation – recalibrate as necessary.	3
Check and reset as necessary fan system temperature controls including coil control valves and dampers.	3
Check air temperature in supply ducts.	3
Check oil level in air compressor – fill as necessary	1
Wash external/internal cooling coils on HVAC units	3
Air Handling Systems	
Check fan belts, pulleys, and bearings – change or adjust belts and lubricate as necessary.	3
Lubricate and check functions of all economizers' linkages and louvers.	3
Change air filters.	3
Hot Water Systems	
Check pumps, belts, and valves for proper operation – lubricate and adjust or replace belts and pump bearings as necessary.	1
Check for water leaks.	1
Check boiler temperature and pressure setting – adjust as necessary.	1
Check boiler flame and combustion chamber.	1
Inspect flue and evacuation fan for proper function.	3
Check boiler tubes.	3
Descale boiler tubes.	12
Check operation of safety controls and gas valve.	3
Check water treatment for Library system.	3
Flush sediment tanks.	3
Clean out fire box and inspect refractory insulation.	12
Cold Water Systems	
Check fans & motor bearings – lubricate as necessary.	3
Check tightness & adjustment of thrust collars on ball-bearing units.	3

Check belt tension and adjust as necessary. Replace belts as needed.	3
Clean all strainers.	3
Check for biological growth in sumps. Clean & flush as necessary.	3
Check spray distribution system.	12
Check and re-orientate nozzles (if necessary), evaporate cooler and industrial fluid coolers with trough-type distribution systems.	3
Adjust and flush out troughs if necessary.	12
Check operating water level and the pan. Adjust float if necessary.	3
Provide appropriate water treatment based on monthly water analysis testing.	3
Check circulation pump operation.	1
Check and clean condensation lines. Use mold prevention tabs	3

Chillers

Log in conditions – supply and fill in log sheets for each chiller	1
Cycle purge and confirm the operation.	3
Visually inspect oil levels and top off if necessary.	1
Verify the refrigerant in the system and add more if needed.	1
Check terminals for tightness.	3
Note unusual noise levels.	3
Check chilled water pumps.	3
Inspect oil for contaminants.	12
Inspect and check for proper function of Dolphin Water Treatment System.	3
Drain cooling tower and clean.	12
Rod chiller condenser coils.	12

Extra Work

No additional extra work shall be commenced or undertaken by the Contractor unless authorized in advance in writing by the Town. Said written authorization is a precedent to the Contractor's entitlement to reimbursement or remuneration for such services. This work shall be performed within a specified time limit established by the Town and for a mutually agreed upon price.

The Town shall retain discretionary right to perform any extra work through the use of Town staff, by negotiated agreement, or to advertise such work by others.

EVALUATION CRITERIA

The following criteria will be used by the Town in evaluating proposals.

1. Cost for the requested scope of services
2. Contractor's previous experience providing similar services, particularly for municipalities or other public agency clients
3. Proposed approach to providing the services requested (personnel, equipment, technology)
4. References
5. Experience of designated contract manager

The Town of Los Gatos reserves the right to reject all proposals, re-advertise, extend the proposal period, or waive minor irregularities or errors that do not materially affect nor substantially alter the proposal process or submittals.

SELECTION PROCESS

Town staff will review all the proposals received using the evaluation criteria listed above. Firms will be ranked based on the quality of their proposals and the extent to which the company demonstrates the ability to provide the services requested in a cost-efficient manner. The top ranked firms will then be invited to an interview with Town staff. The proposers designated contract manager shall attend the interview and be the primary spokesperson and presenter on behalf of the firm.

BUSINESS LICENSE

The successful proposer must either possess a current Town of Los Gatos business license or must have submitted a Town of Los Gatos business license application and fee at the time of award. The cost of a Town Business License for Service Companies is \$100 per year (pro-rated by quarter), plus a \$1.00 State Fee. The Town's Business License Application is available on the Town of Los Gatos website at <http://www.losgatosca.gov/DocumentCenter/View/7812>.

COMPENSATION

The Town reserves the right to reject any or all proposals, wholly or in part, received by reason of this RFP. All costs incurred by the consultant due to developing their proposal shall be borne by the consultant.

The contract for these services shall be subject to payment of prevailing wages pursuant to California Labor Code section 1770, et seq.

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any

contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

STANDARD CONTRACTUAL SERVICES AGREEMENT AND INSURANCE COVERAGE

Contractor shall execute the Town's standard contractual services agreement and procure and maintain the insurance coverages set forth in the Town's Standard Contract Services Agreement, which is shown **Attachment 2**.

MANDATORY PRE-BID MEETING AND WALK THROUGH

A mandatory pre-bid meeting and walk-through is scheduled for **10:00 a.m., September 4, 2015**. Interested contractors are to meet at the Los Gatos Parks & Public Works Service Center located at 41 Miles Avenue in Los Gatos. Failure to attend this mandatory pre-bid meeting will disqualify contractors from bidding this project. A general question and answer session will be followed by site visits at the Civic Center, Library, Service Center and Police Operations Building. No site visits will be scheduled for the 5 park restroom buildings. Proposers are encouraged to visit these facilities independently.

QUESTIONS REGARDING THIS PROPOSAL

All questions must be submitted in writing no later than 5 p.m. on Tuesday, August 18 to Jim Harbin via email at jharbin@losgatosca.gov. All questions and responses will be posted on the Town's website at <http://www.losgatosca.gov/hvacrfp>. The Town will make every effort to post and respond to questions within 2 business days during the proposal solicitation period. The final posting of questions and responses on the Town's website will be **5:00 p.m. Wednesday, September 9, 2015**. Questions submitted in writing prior to the pre-bid meeting and walk-through will be responded to verbally at the pre-bid meeting, and subsequently posted on the Town's website. As deemed appropriate in the Town's sole discretion, responses to questions raised at the pre-bid meeting and walk-through may also be posted on the Town's website.

PROPOSAL REQUIREMENTS

Proposals must include the following:

1. Name, address and contact information (including phone and email) of proposing firm.

2. A description of the firm, including services offered by the firm, firm history, total number of personnel currently employed by the firm, and other relevant information.
3. A minimum of three and a maximum of five references, including one or more public agency clients, where similar services have been, or are currently being provided. References shall include contact name, title, phone number, and email.
4. A list of current clients and contracts where similar services are being provided.
5. The number of personnel and description of any specialized equipment that will be used to provide the services.
6. The name and a summary of experience of the designated contract manager.
7. A completed cost proposal for the requested services on the attached cost proposal form (Attachment 1).
8. A letter signed by a principal of the firm authorized to submit proposals on behalf of the firm.

To be considered for this contract, **three copies** of the proposal must be received by the Town no later than **2:00 p.m. Monday, September 14, 2015** addressed as follows:

Town of Los Gatos
Contract Custodial Services
41 Miles Avenue
Los Gatos, CA 95030

All inquiries or questions regarding this proposal shall be directed to:

Jim Harbin
Facilities and Environmental Programs Manager
408.395.5310
jharbin@losgatosca.gov

Attachments

1. Proposal Form
2. Standard Contractual Services Agreement and Insurance Coverage

**ATTACHMENT 1
PROPOSAL FORM**

The undersigned proposer hereby offers the required services for the following price(s) in strict compliance with the specifications, terms, and conditions set forth in this Request for Proposals.

A. Preventive Maintenance

Building	Number of Hours/Month	Monthly Cost
Civic Center		
Adult Recreation Center		
Library		
Police Operations Building		
PPW Service Center		

B. Labor Rates for Extra Work, as Required

Labor costs must reflect prevailing wages.

Labor Category	Straight Time (\$ per hour)	Overtime (4 per hour)
Plumbing		

C. Equipment and Vehicle Charges for Extra Work, as Required

Equipment Category	\$ per hour

D. Supply Mark-ups for Extra Work, as Required

Description	Mark-up

E. Call Out Minimums

Description	Mark-up

F. Additional Information

1. Company Name:_____

2. Address from which service will be provided:

3. Location of Shop and Storage Facility (must be within 20 miles from Town limits:

4. Number of years providing the specified service:_____

5. Business Organization (Check One):

Individual Proprietorship ____

Partnership ____

Corporation ____

Other_____

If incorporated, provide the following information:

Date of incorporation:_____State of incorporation:_____

Names and titles of all officers and directors:_____

If an individual or partnership, provide the following information:

Formation date of company:_____

Name and address of all partners, indicating whether they are general or limited partners:

6. List the names, titles, and qualifications of the key personnel who will perform work under this contract as well as their roles in relation to the contract. Identify the primary technician to be designated for the Town. Include their certifications, experience, and training.

7. Indicate whether proposer has ever failed to complete any contract awarded to it. If so, note when, where, and why. Attach additional sheets, if necessary.

8. Indicate whether proposer has been or is the subject of a bankruptcy or insolvency proceeding or subject to assignment for the benefit of creditors.

9. List subcontractors, if any, who will perform work under this contract. Attach additional sheets, if necessary.

Company: _____

Location: _____

Describe work to be contracted: _____

Company: _____

Location: _____

Describe work to be: _____

Company: _____

Location: _____

Describe work to be: _____

10. List three organizations for whom proposer performed similar services of a similar scope in the last three years.

Organization: _____

Location: _____

Contact Person: _____ Phone: _____

Describe work performed by proposer: _____

Date work performed: _____

Organization: _____

Location: _____

Contact Person: _____ Phone: _____

Describe work performed by proposer: _____

Date work performed: _____

Organization:_____

Location:_____

Contact Person:_____Phone:_____

Describe work performed by proposer:_____

Date work performed:_____

ADDENDA

Proposer acknowledges receipt of the following Addenda:

Number _____ Date _____

Number _____ Date _____

Number _____ Date _____

SIGNATURE

Signature

Title

Name (printed or typed)

Date

Telephone

Fax

Tax ID Number

Los Gatos Business License Number

ATTACHMENT 2
STANDARD CONTRACTUAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into _____ by and between **TOWN OF LOS GATOS**, a California municipal corporation, (“Town”) and _____ (“Service Provider”), whose address is _____. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Service Provider to provide the following services:_____.
- 1.2 The Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

II. AGREEMENT

- 2.1 Scope of Services. Service Provider shall provide services as described in that certain Proposal sent to the Town dated _____, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. This contract will remain in effect from _____ to _____ with an option of extending the agreement for up to an additional three year terms, for a total agreement of not to exceed four years, at terms to be mutually agreed upon between the Town and the Service Provider.
- 2.3 Compliance with Laws. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Service Provider shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.

- 2.5 Information/Report Handling. All documents furnished to Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.
- 2.6 Compensation. Compensation for services shall be as set forth in the Service Providers bid proposal dated _____.
- 2.7 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a description of the work performed to such detail that the Town can review the invoice.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos

Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95031-0655

- 2.8 Availability of Records. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider offices during business hours upon written request of the Town.
- 2.9 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Service Provider. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.10 Independent Contractor. It is understood that the Service Provider, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and not an agent or employee of the Town. As an independent contractor he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Service Provider may perform some obligations under this Agreement by subcontracting, but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.11 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Service Provider warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Service Provider shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider shall promptly notify Town of this employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

- 2.12 Equal Employment Opportunity. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider nor its subcontractors do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Service Provider agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Service Provider shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Service Provider agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.

- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
 - iv. The Service Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 Workers' Compensation. In addition to these policies, Service Provider shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Service Provider shall ensure that all subcontractors employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Service Provider shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Service Provider, or any of the Service Provider's officers, employees, or agents or any subcontractor.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.

- 4.3 Termination of Agreement. The Town and the Service Provider shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider an amount that bears the same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.
- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Service Provider.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:
- or personally delivered to Service Provider to such address or such other address as Service Provider designates in writing to Town.
- 4.7 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.
- 4.8 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Service Provider. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Service Provider have executed this Agreement.
Town of Los Gatos by:

Les White, Interim Town Manager

Service Provider, by:

Name/Title

Approved as to Form

Robert Schultz, Town Attorney